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SUBJECT: TRANSLUCENCY INTERNATIONAL: GOVERNMENT
PROCUREMENT, HUNGARIAN STYLE

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1. (SBU) Summary: Post attempts to gather data on procurement contracts won by U.S. companies reveal a surplus of regulations and lack of transparency that threaten the potential benefits of the WTO Agreement on Government Procurement (GPA). Hungary's Public Procurement Council's (PPC) procurement data is poorly structured, often unresponsive, and nearly unsearchable. Adding further complexity, a new decree effective August 24 mandates that all procurements over 250,000 USD be approved by a new cabinet agency, which is unlikely to add transparency. U.S. firms' experiences and data from NGOs such as Transparency International reveal numerous obstacles lining the path to fair competition for tenders. In some cases, Post has successfully intervened on behalf of U.S. companies. We continue to engage the GOH on this issue, both directly and as part of an inter-embassy working group. End Summary.

A REGULATORY RUBIK'S CUBE

2. (SBU) A recent Freedom House study states that just 10 percent of total procurements in Hungary are conducted in a "professional manner." While Hungary is party to the WTO Agreement on Government Procurement, many procurements do not meet the GPA's minimum thresholds and are consequently outside its scope. Hungary's legal framework governing procurements, the Public Procurement Act (PPA), adopted in 2003 as a condition for EU membership, is highly complex and frequently amended. The ever-changing nature of the PPA increases the likelihood for competitive bids to be disqualified under questionable circumstances. Understanding these laws, coupled with often disparate enforcement, poses significant barriers for U.S. firms.

3. (SBU) Attempting to research procurement decisions, Transparency International's (TI) Hungary chapter has only come away frustrated. Their director, Noemi Alexa, related to EconOff that the PPC complies with the letter but not the spirit of the law. For example, most procurements must be published in a public Procurement Bulletin. Alexa noted however that the bulletin itself is needlessly difficult to analyze. Embassy attempts to download the bulletin were altogether unsuccessful, as the PPC's website is either too slow or altogether unresponsive. According to Alexa, the website's search engine is unreliable, e.g. searching for procurement notices between 2005-6 returns results from 2004 and 2007 as well. There is effectively no accurate, efficient method to review decisions to determine transparency and compliance with procurement law.

14. (SBU) The lack of effective controls on political party financing also undermines transparency. According to a recent TI report, it is generally assumed that campaign contributions will be returned in kind as government orders. The report elaborates that many businesses in Hungary depend on state and local government orders, and some procurement award decisions are not made on the basis of the most competitive bid, but instead on which company makes the largest contribution to the political party in power. Addressing this concern, TI, Freedom House, as well as the Embassy have encouraged the GOH and Hungarian politicians to reform the system of campaign finance to help ensure a more competitive and non-discriminatory procurement process.

15. (SBU) Effective August 24, a new Cabinet level regulatory body, unconnected to the PPC, must approve all public procurements valued over 250,000 USD. The aim of this body is to reduce potentially unnecessary/wasteful procurements. As several thousand government tenders are issued each year, covering a wide range of economic sectors (often highly technical and at least one hundred pages long), we are doubtful that this agency will effectively determine which procurements are necessary and which are wasteful. We believe instead that the procurement process is likely to get even more complicated.

THE EXCEPTION PROVES THE RULE

16. (SBU) All this bureaucracy leaves ample room to derail a competitive bid. As U.S. companies are often averse to complain too loudly for fear of negative repercussions in future bidding, we believe that many cases of questionable

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procurement decisions never come to our attention. As the case below indicates, having the most competitive bid is not always the deciding factor. In fact, only substantial efforts by the Embassy's FCS ensured a non-discriminatory decision that in a more transparent culture might have occurred naturally.

17. (SBU) In 2005, a U.S. auto company lost a large tender to supply a 3-year fleet rental of patrol cars to the national police, despite having the most competitive bid. According to company executives, the bidding companies were not treated equally throughout the process, with extra demands for information placed only on the U.S. company that were outside the scope of the tender. When the USD 25M tender came up for renewal in 2008, the U.S. company did win, with substantial assistance from FCS and our Ambassador, whose appeals to the Justice Minister resulted in a finding of 'irregularities' in the tendering process (similar irregularities to those the company noted in 2005) and a ruling in favor of the U.S. company.

TOWARDS TRANSPARENCY

18. (SBU) COMMENT: Reams and reams of well intentioned but often misapplied regulations are the Hungarian answer to the question of transparency, yet this amounts to little against a cultural tendency towards opacity in procurement. Although Hungary is a party to the WTO Agreement on Government Procurement, in practice this only impacts the largest tenders, which are a small portion of total procurement spending. In order to address this issue, we continue our engagement with the GOH and Hungarian politicians, along with our participation in the inter-embassy transparency working group. This group represents those countries who comprise 85 percent of foreign direct investment, and presses GOH leaders to make procurement practices more transparent. But much work remains to be done, both on a case by case basis as well as wider efforts to shift the government and business culture

towards greater transparency. End comment.
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